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T.C. Broome Construction Company, Inc. and International Brotherhood of Electrical Workers, Local Union No. 903, AFL-CIO. Cases 15-CA-16185, 15-CA-16231, 15-CA-16232, 15-CA-16247, and 15-CA-16299

July 31, 2006

DECISION AND ORDER

BY MEMBERS LIEBMAN, SCHAUMBER, AND KIRSANOW

On August 14, 2002, Administrative Law Judge Par-gen Robertson issued the attached decision; on September 10, 2002, he issued an erratum. The Respondent filed exceptions and a supporting brief. The General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions as modified,² and to adopt the recommended Order as modified³ and set forth in full below.

¹ The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

There are no exceptions to the judge's finding that Project Manager Tim Hamilton's June 2001 interrogation of James Kidd Jr., did not violate Sec. 8(a)(1), in view of Kidd's open showing that he was associated with the Union.

Because the Respondent repeatedly coercively interrogated employees in violation of Sec. 8(a)(1), we find it unnecessary to pass, as cumulative, on the judge's finding that Foreman Mark Cruff violated Sec. 8(a)(1) by questioning employee David Prichard regarding union employees' use of tape recorders.

Finally, in discussing the Respondent's failure to reinstate four employees, the judge referred to the date they made unconditional offers to return to work as both August 20 and 24, 2001. The correct date, as shown by the testimony and as alleged in the complaint, is August 20, 2001.

² In affirming Conclusion of Law 4, as amended below, we note that, although the complaint alleged both refusal-to-consider and refusal-to-hire violations, the judge truncated the analysis, specifically finding only the refusal-to-hire violations. However, because the broader refusal-to-hire remedy subsumes the remedy for any refusal-to-consider violation, the judge's failure to make explicit findings regarding the refusal-to-consider allegations does not materially affect the remedy. Therefore, we need not reach this issue. See *Jobsite Staffing*, 340 NLRB 332, 333 (2003).

³ We have modified the judge's recommended Order by (1) deleting par. 1(a) (it appears that the judge inadvertently copied that language

We also amend Conclusions of Law 3 and 4 and the remedy section of the judge's decision as set forth in full below.⁴

AMENDED CONCLUSIONS OF LAW

Substitute the following as new Conclusions of Law 3 and 4:⁵

"3. The Respondent, by coercively interrogating its employees about the Union; by demanding that its employees promise not to talk about the Union or try to organize its job; by telling its employees that other employees had been laid off because of their union activities; by telling its employee that it had phoned him in an effort to mislead prounion employees into believing they were not being laid off because of the Union; by telling its employee he may be considered for promotion if he promised not to engage in union organizing activity; by telling its employees that it had to get rid of some employees because they were trying to organize the job; by threatening to fire its employee if he talked about the Union on the job; by creating the impression among its employees that it was engaged in surveillance of the employees' union activities; by stating in the presence of its employee that it had just fired the employee who was "the last Union man on the job"; and by telling employees that certain union employees were "blackballed" and that the Respondent could not hire union employees, engaged in conduct in violation of Section 8(a)(1) of the Act."

"4. The Respondent, by laying off employees Joe Breland, Scottie Ladner, Bill Ballard, Dale Weekly, Ralph Morin, Sam Patterson, and Jesse Lewis on May 4, 2001, and by failing and refusing to recall Joe Breland, Bill Ballard, and Dale Weekly on May 7; by failing and refusing to hire employees James Kidd Jr., Cliff Zylks, Hewitt Barton, Gerald Lott, Clay Leon, Richard Berlier,

from another order); (2) adding new pars. 1(a) through (o), ordering the Respondent to cease and desist from the unfair labor practices found by the judge; and (3) adding our standard electronic records, expungement, and contingent notice-mailing language (see *infra* pars. 2(f), (e), and (h), respectively). We have substituted a new notice to conform to the modified Order.

⁴ We have deleted fns. 21 and 22 from the remedy section of the judge's decision, as those footnotes appear to have been inadvertently copied from another decision. We have also amended the remedy to conform to the judge's conclusions of law as amended herein.

⁵ We have amended Conclusion of Law 3, consistent with the judge's finding of an unfair labor practice (JD 13:1-5), to add that the Respondent also violated Sec. 8(a)(1) by Hamilton's and Cruff's comments that employees David and Scottie Ladner were "blackballed" and that the Respondent could not hire union employees. The judge inadvertently omitted these findings from his Conclusions of Law. In addition, we have amended Conclusion of Law 4, consistent with the judge's corresponding finding (JD 7:27), to correctly reflect that Scottie Ladner was terminated on May 21 (not May 15).

Chuck Dame, and Dwane Reeves on and after May 15 and employees Alvin Cuevas, Kerman Ladner, and Troy Bordelon on and after July 6; by discharging employee Scottie Ladner on May 21; and by refusing to recall, on and after August 20, employees David Prichard, David Brown, Ernest Robertson, and Thomas Corbin following their economic strike and unconditional offer to return to work, has engaged in conduct in violation of Section 8(a)(1) and (3) of the Act.”⁶

AMENDED REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent, having discriminatorily laid off employees Joe Breland, Scottie Ladner, Bill Ballard, Dale Weekly, Ralph Morin, Sam Patterson, and Jesse Lewis on May 4, 2001, and having failed to recall Breland, Ballard, and Weekly on May 7, 2001, and having discriminatorily discharged Scottie Ladner on May 21, 2001,⁷ must offer Breland, Ladner, Ballard, and Weekly full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, and make Breland, Ladner, Ballard, Weekly, Morin, Patterson, and Lewis whole for any loss of earnings and other benefits, computed on a quarterly basis from their dates of discriminatory layoff or discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

The Respondent, having discriminatorily refused to reinstate former economic strikers Thomas Corbin, David Brown, David Prichard, and Ernest Robertson following their unconditional offer to return to work on August 20, 2001, to vacancies created by the departure of replacements from the strikers’ former jobs or to vacancies in substantially equivalent positions, must offer them full reinstatement to their former jobs or to substantially equivalent positions, and make them whole for any loss of earnings and other benefits, computed on a quarterly basis from the dates of the discriminatory refusals to reinstate to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, above, plus interest as computed in *New Horizons for the Retarded*, above.

⁶ We note that certain employees’ names were spelled differently in the complaint and/or exhibits. To avoid confusion, we have referred to employees and spelled their names as the judge did in his decision.

⁷ The remedy for Scottie Ladner should reflect that he was laid off on May 4, recalled on May 7, and then discharged on May 21.

The Respondent, having discriminatorily refused to hire James Kidd Jr., Cliff Zylks, Hewitt Barton, Gerald Lott, Clay Leon, Richard Berlier, Chuck Dame, Dwane Reeves, Alvin Cuevas, Kerman Ladner, and Troy Bordelon, must offer them instatement and make them whole for any loss of earnings and other benefits, computed on a quarterly basis from the date they would have been hired, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, above, plus interest as computed in *New Horizons for the Retarded*, above.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified and set forth in full below and orders that the Respondent, T.C. Broome Construction Company, Inc., Pascagoula, Mississippi, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Informing employees that they and/or other employees had been laid off because of their union activities or the union activities of others.

(b) Telling employees that they would be considered for promotion if they promised not to engage in union activity.

(c) Coercively interrogating employees about union support or union activities.

(d) Creating an impression among its employees that their union activities were under surveillance by the Respondent.

(e) Conditioning employees’ employment on their assurances that they would not engage in union activity.

(f) Telling employees that they had been contacted for the purpose of misleading other employees into believing they were not being laid off because of their union activities.

(g) Threatening employees with termination if they talked about the Union.

(h) Informing employees that other employees had been terminated because of their union activities.

(i) Informing employees that it would not hire union electricians.

(j) Informing employees that it was blackballing former employees because of their union activities.

(k) Promulgating and maintaining an overly broad no-solicitation rule.

(l) Laying off employees, and refusing to recall them, because they joined or assisted the Union and engaged in concerted activities.

(m) Discharging or otherwise discriminating against any employee for supporting the International Brotherhood of Electrical Workers or any other labor organization.

(n) Refusing to hire job applicants because of their union membership or sympathies.

(o) Refusing to offer, without justification, its former striking employees, who made unconditional offers to return to work, reinstatement to their prestrike positions when those positions become available.

(p) In any like or related manner interfering with, restraining, or coercing employees or applicants for employment in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Joe Breland, Scottie Ladner, William Ballard, and Dale Weekly full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Within 14 days from the date of this Order, offer David Brown, Thomas Corbin, David Prichard, and Ernest Robertson full reinstatement to their former jobs, discharging, if necessary, any employees hired to fill those positions after the strikers' August 20, 2001, offer to return to work, or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(c) Within 14 days from the date of this Order, offer James Kidd Jr., Cliff Zylks, Hewitt Barton, Gerald Lott, Clay Leon, Richard Berlier, Charles Dame, Dwane Reeves, Alvin Cuevas, Kerman Ladner, and Troy Bordelon reinstatement to the positions for which they applied or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges to which they would have been entitled absent the discrimination.

(d) Make Joe Breland, Scottie Ladner, William Ballard, Dale Weekly, Sam Patterson, Ralph Morin, Jesse Lewis, David Brown, Thomas Corbin, David Prichard, Ernest Robertson, James Kidd Jr., Cliff Zylks, Hewitt Barton, Gerald Lott, Clay Leon, Richard Berlier, Charles Dame, Dwane Reeves, Alvin Cuevas, Kerman Ladner, and Troy Bordelon whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the amended remedy, above.

(e) Within 14 days from the date of this Order, remove from its files any reference to the unlawful layoffs/ discharges of Joe Breland, Scottie Ladner, William Ballard, Dale Weekly, Ralph Morin, Sam Patterson, and Jesse Lewis, the unlawful refusals to reinstate David Brown, Thomas Corbin, David Prichard, and Ernest Robertson,

and the unlawful refusals to hire James Kidd Jr., Cliff Zylks, Hewitt Barton, Gerald Lott, Clay Leon, Richard Berlier, Charles Dame, Dwane Reeves, Alvin Cuevas, Kerman Ladner, and Troy Bordelon and, within 3 days thereafter, notify them in writing that this has been done and that the unlawful actions against them will not be used against them in any way.

(f) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(g) Rescind its unlawful no-solicitation rule prohibiting employees from talking about the union to anyone, and rescind and expunge any warnings or other discipline imposed for violation of this rule.

(h) Within 14 days after service by the Region, post at its facilities in Long Beach and Pascagoula, Mississippi, copies of the attached notice marked "Appendix."⁸ Copies of the notice, on forms provided by the Regional Director for Region 15, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 4, 2001.

(i) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

⁸ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Dated, Washington, D.C. July 31, 2006

Wilma B. Liebman,	Member
Peter C. Schaumber,	Member
Peter N. Kirsanow,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT inform employees that they and/or other employees had been laid off because of their union activities or the union activities of others.

WE WILL NOT tell employees that they will be considered for promotion if they promise not to engage in union activity.

WE WILL NOT coercively interrogate any employee about union support or union activities.

WE WILL NOT create an impression among our employees that their union activities are under surveillance.

WE WILL NOT condition employees' employment on their assurances that they will not engage in union activity.

WE WILL NOT tell employees that they were contacted for the purpose of misleading other employees into believing they were not being laid off because of their union activities.

WE WILL NOT threaten employees with termination if they talk about the Union.

WE WILL NOT inform employees that other employees had been terminated because of their union activities.

WE WILL NOT inform employees that we will not hire union electricians.

WE WILL NOT inform employees that we have black-balled former employees because of their union activities.

WE WILL NOT promulgate and maintain an overly broad no-solicitation rule.

WE WILL NOT lay off employees, and refuse to recall them, because they joined or assisted the Union and engaged in concerted activities.

WE WILL NOT discharge or otherwise discriminate against any employee for supporting the International Brotherhood of Electrical Workers or any other labor organization.

WE WILL NOT refuse to hire job applicants because of their union membership or sympathies.

WE WILL NOT refuse to offer, without justification, our former striking employees, who made unconditional offers to return to work, reinstatement to their prestrike positions when those positions become available.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of rights set forth above.

WE WILL, within 14 days from the date of the Board's Order, offer Joe Breland, Scottie Ladner, William Ballard, and Dale Weekly, full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL, within 14 days from the date of the Board's Order, offer David Brown, Thomas Corbin, David Prichard, and Ernest Robertson full reinstatement to their former jobs, discharging, if necessary, any employees hired to fill those positions after the strikers' August 20, 2001, offer to return to work, or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL, within 14 days from the date of the Board's Order, offer James Kidd Jr., Cliff Zylks, Hewitt Barton, Gerald Lott, Clay Leon, Richard Berlier, Charles Dame, Dwane Reeves, Alvin Cuevas, Kerman Ladner, and Troy Bordelon reinstatement to the positions for which they applied or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges to which they would have been entitled absent our discrimination against them.

WE WILL make Joe Breland, Scottie Ladner, William Ballard, Dale Weekly, Sam Patterson, Ralph Morin,

Jesse Lewis, David Brown, Thomas Corbin, David Prichard, Ernest Robertson, James Kidd Jr., Cliff Zylks, Hewitt P. Barton Sr., Gerald Lott, Clay Leon, Richard Berlier, Charles Dame, Dwane Reeves, Alvin Cuevas, Kerman Ladner, and Troy Bordelon whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful layoffs/discharges of Joe Breland, Scottie Ladner, William Ballard, Dale Weekly, Ralph Morin, Sam Patterson, and Jesse Lewis, the unlawful refusals to reinstate David Brown, Thomas Corbin, David Prichard, and Ernest Robertson, and the unlawful refusals to hire James Kidd Jr., Cliff Zylks, Hewitt Barton, Gerald Lott, Clay Leon, Richard Berlier, Charles Dame, Dwane Reeves, Alvin Cuevas, Kerman Ladner, and Troy Bordelon, and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that the unlawful actions against them will not be used against them in any way.

WE WILL rescind our unlawful no-solicitation rule prohibiting employees from talking about the union to anyone, and rescind and expunge any warnings or other discipline imposed for violation of this rule.

T.C. BROOME CONSTRUCTION COMPANY, INC.

Chris J. Doyle, Esq. and Kevin McClue, Esq., for the General Counsel.

Benjamin H. Banta, Esq. and William E. Hester, Esq., of New Orleans, Louisiana, for the Respondent.

Roger K. Doolittle, Esq., of Jackson, Mississippi, for the Charging Party.

DECISION

STATEMENT OF CASES

PARGEN ROBERTSON, Administrative Law Judge. This case was heard in Pascagoula, Mississippi, on January 8 and 9, 2002. On the entire record,¹ including my observation of the demeanor of the witnesses, and after considering the briefs filed by Respondent and the General Counsel, I make the following

FINDINGS

I. JURISDICTION

T.C. Broome Construction Company, Inc. is a corporation, with its principal office and place of business in Pascagoula, Mississippi, with a jobsite at Long Beach, Mississippi, where it is engaged in business as a general contractor in the construction industry doing marine, commercial, and industrial con-

struction. Respondent admitted that during the 12-month period ending September 30, 2001, in conducting its business operations, it performed services valued in excess of \$50,000 in States other than Mississippi and during that same 12-month period it purchased and received at its Pascagoula and Long Beach, Mississippi sites goods valued in excess of \$50,000 directly from points outside Mississippi; and it has been at all material times, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

Respondent admitted that the Charging Party (the Union) has been a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. The 8(a)(1) allegations

1. Tim Hamilton

The record shows that Respondent's project manager, Tim Hamilton, on its University of Southern Mississippi job at Long Beach, Mississippi had several conversations with employees and applicants regarding union organizing on the job. For example, when William Ballard III applied for work with Respondent at its University of Southern Mississippi site in Long Beach in April 2001,² Tim Hamilton asked Ballard if he was organized or in the Union. Ballard told Hamilton that he had nothing to do with the Union and did not want any part of it.

On May 4 David Ladner tape-recorded a conversation with Tim Hamilton as Ladner applied for work with Respondent at its Long Beach job. Among other things, Hamilton asked Ladner, "I am going to be to you, technically I am not suppose to ask you this question, but how are you affiliated with 903? At all! Are you in the Union?" David Ladner replied that he had been a member of the Union for about 6 years. Hamilton said,

"Y'all have got to promise me that y'all will not try to bring the union up in here. That Joe Breland, him and Dale Weekly. . . . Joe got him into the union. . . . Like two weeks ago he swore into the union, I have two other guys out here that did not want to join the union, Joe has been bugging him everyday. You need to go down there, you need to go down there, you need to go down there you know, just staying on them.

. . . .

They did go down to the union hall just to hear them out. The guy at the union hall started telling them that they are going to try to get fifty-one percent of the people hired in here that is union and they are going to try to over turn this job and all that. And if they do I am out of here. I'll lose my job.

. . . .

¹ General Counsel submitted its GC Exhs. 85-111 by stipulation with Respondent. Those exhibits are received in evidence. GC Exhs. 112-116 were also submitted but were not included in the stipulation.

² Respondent's job relevant to these proceedings was a job at the University of Southern Mississippi campus at Long Beach, Mississippi. Occasionally that job is referred to as the University of Southern Mississippi job or the USM job or the Long Beach job.

OK, but I need you to talk to Scottie for me, tell him not to be mad at me.

....

He got caught up in that little ring down there with Joe and Dale and they even got another guy I had just hired, Bill Ballard. I don't think you know him but I had just hired him last Monday.

On May 7, 2001, Tim Hamilton asked Scottie Ladner³ to come to the job. Hamilton and Ladner spoke in the job trailer. Hamilton told Ladner that he owed him an apology; that he got caught up in a situation where he had to get rid of certain people; that he had to get rid of Joe Breland and Dale Weekly; and that they were on his job trying to organize the job. Ladner told Hamilton that he was not out there trying to organize. Hamilton told Scottie Ladner not to be talking to anybody about union, not to try to organize and to just do his job.

Before lunch Scottie Ladner noticed a meeting of a group of employees. Hamilton came to him and said that he had held a meeting and had told the employees that Ladner would not be talking any union shit. Hamilton told Ladner that he would have to fire him again if he spoke any union shit to anyone. Ladner assured Hamilton that he would not do that and that he was just there to do his job.

2. Mark Cruff

On May 15, after David Prichard had started working, General Foreman Mark Cruff came to him and asked if he used to be a member of the Union. Prichard said yes and that he was still a member of the Union. On June 16, Prichard talked to Tim Hamilton and Mark Cruff about needing more employees on the job. Prichard said there were a lot of union employees that could help but Hamilton and Cruff said they could not hire union employees. They asked Prichard if he knew any nonunion employees that could come on the job.

3. Either Tim Hamilton or Mark Cruff

David Prichard overheard either Mark Cruff or Tim Hamilton say, "that's the last union man on the job," on May 21 after they had terminated Scottie Ladner.

B. The 8(a)(3) allegations

1. Laid off seven employees on May 4, 2001

Respondent notified seven employees including Joe Breland, Scottie Ladner, Bill Ballard, and Dale Weekly, they were laid off on May 4, 2001. The General Counsel alleged that Breland, Scottie Ladner, Bill Ballard, and Dale Weekly were laid off because of their own union activity and the other three employees⁴ were laid off in an effort to disguise the fact that Breland, Ladner, Ballard, and Weekly were laid off because of their union activity.

³ Scottie Ladner is also referred to as Scot Ladner and as Ceville Scott Ladner.

⁴ Respondent also laid off employees Ralph Morin, Sam Patterson, and Jesse Lewis. There was no showing that Morin, Patterson, and Lewis were affiliated with the Union or the organizing of Respondent's employees.

Joe Breland testified that he applied for a job with Respondent at its University of Southern Mississippi jobsite on April 19, 2001. He filled out an application and talked to Tim Hamilton. Hamilton told Breland that he was hired and to report to Respondent's office in Pascagoula for orientation. After completing orientation, Breland worked at the Long Beach site as an electrician. Breland was a member of the Union but he wore nothing showing he was for the Union when he went to Respondent and he did not talk to any employees about the Union during work. He did talk with employees Dale Weekly and Bill Ballard after work and with Ralph Morin and Joe somebody at a tavern in Wiggins, Mississippi. All those conversations occurred during April 2001. Dale Weekly and Bill Ballard joined the Union. The only employee Scottie Ladner spoke to about the Union was Bill Ballard.

Scottie Ladner also applied for work with Respondent at its USM site in Long Beach in April. Ladner was wearing normal clothing but he did have an IBEW pencil clip. Applicant Greg Paine accompanied him. Ladner spoke with Tim Hamilton. Hamilton spoke with someone on his radio and said that he could hire only one of the two at that time. Scottie Ladner suggested hiring Paine and Paine was hired for Respondent's job in Ocean Springs, Mississippi. Scottie Ladner was phoned by Tim Hamilton and hired at a later date. After orientation at Pascagoula Ladner reported to work for Respondent at the Long Beach job on April 30, 2001. He was an electrician and a member of the Union.

William Ballard III testified that he applied for work with Respondent at its University of Southern Mississippi in Long Beach in April 2001. He did not know Tim Hamilton or Mark Cruff or Donald or James Taylor. Nor did he know any of Respondent's employees before he started work. Tim Hamilton asked Ballard if he was organized or in the Union. Ballard told Hamilton that he had nothing to do with the Union and did not want any part of it. Ballard was hired around April 30.

Dale Weekly applied for work at Respondent's Long Beach job in April 2001. At that time he did not know any of Respondent's managers or supervisors. Weekly joined the Union on April 27, 2001 (GC Exh. 54), after talking with Joe Breland in the parking lot at the Long Beach jobsite. He was laid off on May 4 and has not been recalled. Mark Cruff told Weekly that the general contractor postponing the job on the library caused the layoff. Weekly went over to see the superintendent from the general contractor. The general contractor was Roy Anderson and the superintendent was named Dave. Weekly asked Dave if they had postponed any schedules on the library and Dave replied no and asked who told that to Weekly. Weekly replied Mark Cruff. Dave said that Cruff did not know what he was talking about because "we haven't postponed any schedule on this library."

David Ladner heard that his friend, Scottie Ladner, had been laid off on May 4. He went to the union hall and Union Organizer Chip Barnes suggested he try for a job with Respondent. He phoned and Tim Hamilton told him to meet him at the job. Ladner tape-recorded⁵ his conversation with Hamilton (GC

⁵ Wallace "Chip" Barnes was employed by the Union as an organizer for Local 903 when several men came on May 4, 2001, and com-

Exh. 19). Hamilton said that he had to lay off some people because Joe Breland had been talking union business on the job and he got a couple of the other guys to go down to the union hall. Hamilton asked if Ladner was in the Union and Ladner told him that he was. Tim Hamilton said that he did not think Scottie Ladner, David Prichard, or David Ladner would hurt him by doing what Breland had done. Hamilton said that he planned to bring Scottie Ladner and Prichard back.

On the day before the layoff—(May 3)—Scottie Ladner, Bill Ballard and other employees were released early and Scottie Ladner drove Ballard to the union hall. Ballard joined the Union at the union hall that day after talking with co-employees Scottie Ladner and Joe Breland (GC Exh. 53).

Tim Hamilton came to the employees on May 4 and said there was going to be a layoff. Around 10:30 a.m. Mark Cruff gave Joe Breland layoff slips for himself, Scottie Ladner, Bill Ballard, and Dale Weekly. Respondent has not recalled Breland, Ballard, or Weekly. After he and Ballard were given layoff slips, Scottie Ladner found Tim Hamilton and asked about the layoff. Hamilton said they had to reduce the work force and that he would let Ladner know if they started hiring. Later that day Hamilton phoned Scottie Ladner. Hamilton said that he wanted to call Ladner, that he owed Ladner an apology, that he got caught up in a certain situation, and that he would let Ladner know later. Hamilton asked Ladner to call him over the weekend. Ladner tried but was not successful in reaching Hamilton that weekend.

On May 7, Hamilton asked Scottie Ladner to come to the job. Hamilton told Ladner that he owed him an apology; that he got caught up in a situation where he had to get rid of certain people; that he had to get rid of Joe Breland and Dale Weekly; and that they were on his job trying to organize the job. Scottie Ladner told Hamilton that he was not out there trying to organize. Hamilton told him not to be talking to anybody about union, not to try to organize and to just do his job.

Hamilton also talked to David Ladner. He told David Ladner that he was not going to be able to bring him in till the following Wednesday because that's when they had the orientation in Pascagoula. However, as Hamilton and Ladner were walking out of the office trailer they met King, the project manager. Hamilton told Ladner to go ahead and report the following Monday (May 7). Ladner reported as directed and underwent orientation in Pascagoula on May 7.

David Prichard applied for work with Respondent at the Long Beach jobsite around May 1, 2001. He knew Tim Hamilton before he applied. While he was completing his application Hamilton came in and told him to report to Pascagoula the following Monday for orientation. Afterward, Mark Cruff phoned Prichard. Cruff told him the orientation was off because they were laying off people and did not need anyone. Later that afternoon Hamilton phoned Prichard. Hamilton said that he had

Cruff phone Prichard that morning because Joe Breland and a few other union members were in the office being laid off and he wanted them to hear the conversation between Prichard and Cruff so they would not think Respondent was hiring anyone but that Prichard should go ahead and report for orientation the next Monday. Hamilton said that he wanted Breland and the other union members off the job because Breland had already taken a few employees to the union hall and they were organizing his job. Tim Hamilton told Prichard that he had been chewed out and told he would have to take care of the situation and he had to do this in order to keep his job.

Electrical and Instrumentation Manager Donald Chip Taylor testified that the May 4 layoff resulted from the general contractor advising first Tim Hamilton than Taylor, that work would be delayed. Taylor phoned Hamilton that he would send a memo to Hamilton authorizing a reduction in force. Subsequently, that afternoon, the general contractor told Taylor that the work would not be delayed. Taylor testified both he and Hamilton attempted to contact some of the laid off employees to have them return to work.⁶

Dale Weekly testified that following receipt of his layoff slip on May 4 Cruff told him that the job on the library had been postponed. Weekly then went to the general contractor's superintendent who told him that the job schedule had not been postponed.

The full record shows that Tim Hamilton initially hired union employees. However, when confronted with evidence that some of those employees were engaged in organizing activity on his job, Hamilton reacted unlawfully. As shown above he made numerous comments to employees in violation of Section 8(a)(1) and, after laying off several employees on May 4, he commented to employees that he had laid off those employees because some of them were involved in union organizing activity. That evidence shows that Respondent harbored animus against union organizing activity on its Long Beach job.

2. May 15 and afterward

On May 15, after Prichard had started working, Mark Cruff came to him and asked if he used to be a member of the Union. Prichard said yes and that he was still a member of the Union. On June 16 Prichard talked to Tim Hamilton and Mark Cruff about needing more employees on the job. Prichard said there were a lot of union employees that could help but Hamilton and Cruff said they could not hire union employees. They asked Prichard if he knew any nonunion employees that could come on the job.

On June 19, Cruff and Hamilton asked David Prichard about bringing people on the job. Prichard said that David and Scottie

plained Respondent had laid them off. David Ladner was present and said that he knew the man that was running the job for Respondent. Barnes gave Ladner a tape-recorder and asked him to apply for work with Respondent. Ladner brought the tape back to Barnes that same day. Barnes kept the original tape in his office until he turned the tape over to an NLRB agent.

⁶ Taylor testified that he phoned Breland and the phone had been disconnected; he phoned Weekly but there was no answer; Taylor contacted Ralph Morin and Sam Patterson and Hamilton contacted Jesse Lewis. There was no testimony that anyone tried to contact Ballard. Don Taylor eventually stopped trying to contact anymore laid-off employees. He had two new hires scheduled to begin work the week of May 7. However, Breland testified that neither of his phones was disconnected in May 2001 and Weekly testified that he had caller ID and voice mail on his phone and did not receive any phone calls from Respondent after he was laid off on May 4.

Ladner were not working. Hamilton and Cruff said they basically were blackballed and they could not hire them back and they could not hire union employees anyway.

On June 25 Mark Cruff asked Prichard if he had taped any conversation with him or Tim Hamilton and Prichard replied no.⁷ Cruff asked if all union employees had tape recorders. Prichard said that some do and some don't.

3. Failed to consider eight employees for hire
on May 15, 2001

James Kidd Jr. went to Respondent's Long Beach job on May 15 with seven other job applicants. All eight wore white IBEW Local 903 T-shirts, ball caps, and organizing committee badges. Kidd asked Tim Hamilton for applications. All eight individuals filled out applications and left those applications and resumes with Respondent. Hamilton said he would be hiring helpers within the next week. The same eight applicants also went into Respondent's Pascagoula office and were told their application at Long Beach were good.

Kidd returned to the Long Beach site on June 6 and tape-recorded his conversation with Tim Hamilton (GC Exh. 25). On July 5 or 6 Kidd returned to the job and spoke with Hamilton. Respondent has not offered employment to any of those applicants.

Charles Dame Jr. testified in corroboration with James Kidd, about applying for work on Respondent's Long Beach job on May 15 (see GC Exh. 56). Tim Hamilton told Dame that his application with Respondent would be good for 6 months. Dame phoned Chip Taylor at Respondent's Pascagoula office on May 30, August 7, and on one or two other occasions, and identified himself as a union organizer that had filled out an application with Respondent. Taylor told him that he had enough electricians, that it changes every week and basically that he did not have a job for Dame.

From May 15 until November 15, 2001, Respondent hired 31 journeymen electricians and 27 electrical helpers (GC Exh. 48).

Donald Taylor testified that he was responsible for Respondent's hiring and that he used a three-tiered hiring system. He first considered applicants he knew. Secondly he considered applicants recommended by managers and employees. Thirdly, he considered all other applications. He testified that he did not hire anyone under the third tier in 2001. Taylor also testified that he has never hired a journeyman electrician to work at less than the journeyman rate of pay and that he did not hire journeymen electricians for helper positions.

James Kidd tape-recorded a June 6 conversation with Tim Hamilton as to why Respondent had not hired union applicants (GC Exh. 25). Among other things, Hamilton said that Kidd wanted on the job to organize it and that the Union came first to Kidd. From June 6 until November 15, Respondent hired 30 journeymen electricians and 27 helpers (GC Exh. 49). None of the eight that applied on May 15 were offered employment.

4. Terminated Scottie Ladner on May 21, 2001

Scot Ladner was fired for the second time on May 21. Mark Cruff told him he was being fired for nonproduction. Prior to that Ladner had received only one disciplinary action and that

occurred on May 14 when he received a verbal warning for being late for work. During the hearing, Ladner was shown another warning dated May 10 (GC Exh. 4). He denied that he received a warning on May 10 and he denied that he had ever seen the warning slip identified as General Counsel Exhibit 4. As indicated above, from the time he first started working for Respondent, Ladner wore an IBEW pencil clip and carried a tool pouch on which he had written "Local Union 903." He also had IBEW stickers on his truck. Ladner testified on cross-examination that his foreman, Mark Cruff, knew he was in the Union when he first started working for Respondent.

On May 4 Tim Hamilton told both David Ladner and David Prichard, and on May 7 Hamilton told Scottie Ladner, that employees⁸ had been laid off on May 4 because of a situation where Respondent had to terminate Joe Breland and Dale Weekly because they were trying to organize the job. After Hamilton told Scottie Ladner that he could not talk union on the job, Ladner told Hamilton that he was not there to organize.

On May 21 David Prichard overheard either Mark Cruff or Tim Hamilton say, "that's the last union man on the job, when Scottie Ladner was terminated."

5. Failed to consider three employees for
hire on July 6, 2001

Alvin Cuevas and Farran Hoda applied for work with Respondent at Long Beach. Cuevas completed a written application for work and left the application with Respondent. He listed Joe Breland as a personal reference. Cuevas filled out a log at the union hall showing the date of his application with Respondent as May 2, 2001. While applying Cuevas wore a union belt buckle and he spoke with Tim Hamilton. Respondent has never contacted Cuevas or offered him employment.

Cuevas applied with Respondent again on July 6. At that time he was with Kerman Ladner and Troy Bordelon. All three were wearing union caps and shirts. Cuevas asked Tim Hamilton if his application was still good and Hamilton replied that it was. Cuevas did not complete another application. Both Ladner and Bordelon completed applications and left the applications with Respondent.

Kerman Ladner Jr. testified about his application for work with Respondent at Long Beach on July 7, 2001.⁹ He was with Troy Bordelon and Cuevas. He was wearing a union hat and shirt. He spoke with someone that identified himself as the electrical foreman, who gave Ladner an application form. Ladner as well as Troy Bordelon completed an application and left it with Respondent.

Respondent has never contacted Cuevas, Kerman Ladner, or Troy Bordelon or offered any of them employment. From July 6 until January 6, 2002, Respondent hired 32 journeymen electricians.

David Brown applied at the Long Beach job on July 9 and was hired as a journeyman electrician by Tim Hamilton. Brown asked Hamilton if he need more help and Hamilton said that he

⁸ As shown herein, those employees that were laid off on May 4 included Scottie Ladner.

⁹ The parties stipulated that if called Troy Bordelon would testify in corroboration of Herman Ladner Jr.

⁷ Prichard testified that he did maintain a daily record.

did. Brown returned with Ernie Robertson¹⁰ and Hamilton hired Robertson. Neither Brown nor Robertson wore any union paraphernalia.

6. Refused to reinstate four employees¹¹ from
August 20, 2001

On August 7 David Prichard asked Tim Hamilton about a raise he had been promised. Hamilton said he would get it the next week. Prichard replied it had been 4r or 5 weeks now that he had been promised the raise. He said that Hamilton had promised him and others pay raises. Prichard told Hamilton that he was just going out on an economic strike. Three other employees, David Brown, Ernie Robertson, and Thomas Corbin, stood up and said they were also going out on an economic strike. On that same day James Kidd Jr. wrote Respondent and identified Thomas Corbin, Ernest Robertson, David Prichard, and David Brown as volunteer union organizers and that the four were on economic strike (GC Exhs. 24A–D). On that same day, James Kidd wrote Respondent and identified Thomas Corbin, Ernest Robertson, David Prichard, and David Brown as volunteer union organizers and that the four were on economic strike.

On August 24 Prichard, David Brown, Ernie Robertson,¹² and Thomas Corbin¹³ went to the worksite. Mark Cruff told them that Tim Hamilton had been fired. The four told Cruff they were willing to come back to work on unconditional terms. Cruff said that he couldn't just let them come back without talking to the office and that he would get back with them. Later that day David Brown phoned Respondent from the union hall and spoke with James Taylor. Brown told Taylor that he was calling on behalf of Corbin, Robertson, Prichard, and himself and that they were making unconditional offers to return to work. James Taylor replied that their positions had been filled. Respondent has not reinstated Brown, Prichard, Robertson, or Corbin. From August 24, Respondent hired 24 journeymen electricians (GC Exh. 48).

September

David Simmons applied for work at the Long Beach site in August 2001. He spoke with Sid Bowers. Bowers said Respondent was not hiring and he took Simmons's address and phone number. In September after being phoned by Bowers and told to report to Pascagoula, Simmons went to Respondent's Pascagoula office and spoke with Chip Taylor. Simmons submitted an application for work at that time and was hired. At none of the times before his hiring did Simmons wear anything to show that he favored the Union. Two other people were also in the Pascagoula office and were seen by Simmons working on the

Long Beach job. Simmons worked only 1 day before joining an economic strike.

Findings

Credibility

I base my credibility findings on the full record including demeanor of the witnesses and other evidence including especially whether the testimony was rebutted or supported by other testimony. Some of the evidence was supported by tape recordings. In those instances the tape-recorded conversations are fully credited over the recollections of witnesses. I credit the testimony of William Ballard, David Ladner, Scottie Ladner, David Prichard, Joe Breland, Wallace Barnes, Alvin Cuevas, James Kidd Jr., David Simmons, Dale Weekly, Kerman Ladner Jr., David Brown, and Charles Dame Jr. None of their testimony was rebutted by Tim Hamilton. Hamilton did not testify. Additionally, testimony of incidents involving Mark Cruff were not rebutted even though Cruff did testify.

I was not impressed with the demeanor of Donald Chip Taylor or Mark Cruff. Moreover, the record shows their testimony was clearly untrue in several instances. For example Taylor testified that the May 4 layoff was caused by an indefinite slowdown by the general contractor. However, evidence including Taylor's testimony illustrates there was no justification for a layoff. Taylor testified that he was advised by Project Manager Hamilton and corroborated by the general contractor that there would be some areas that were going to be delayed for an unknown amount of time. According to Taylor's testimony he did not inquire, nor did he learn, that any delay action would impact on Respondent's work. Nevertheless, according to Taylor, he told Hamilton to layoff 20 percent of Respondent's work force. Other evidence showed that some of the laid off employees including the three that were not known to be affiliated with the Union, were recalled immediately, two new employees were hired on May 4 and Tim Hamilton told several employees that the layoff was caused by employees Joe Breland and Dale Weekly trying to organize the job. Moreover, the general contractor's site superintendent told Dale Weekly that there was no delay on the job. Additionally, as shown herein, Taylor testified about the method Respondent employed in hiring applicants. That method involved a three-tier system and all the alleged discriminatees were in the third tier of that system. Coincidentally Respondent did not hire anyone from the third tier in 2001. However, Respondent's records showed that Respondent did not follow the system described by Taylor. Contrary to his testimony that he was responsible for all hiring, the record illustrated that the project manager frequently hired applicants on the spot without checking with Taylor. Taylor testified that he never hired a journeyman in a helper position or a helper in a journeyman position, but Respondent's records showed that he hired class A helper Ralph Howze on September 10 after Howze applied on September 5 (GC Exh. 111). Additionally, credited testimony showed that several of General Counsel's witnesses were hired even though they did not qualify under either of the first two tiers of the alleged hiring system.

Taylor also testified that he never hired applicants that applied in groups and Respondent did not hire any journeyman electrician who indicated he had other electricians they could

¹⁰ Also identified as Earnest Robertson.

¹¹ The General Counsel alleged that employees engaged in a strike from August 6 to 20, 2001, and that employees David Brown, Thomas Corbin, David Prichard, and Ernest Robinson made unconditional offers to return to work on August 20 but that Respondent has refused to reinstate those four employees.

¹² The parties stipulated as to what Robertson would testify if called (Tr. 230 and 233).

¹³ The parties stipulated as to what Corbin would testify if called (Tr. 232).

bring in. However, Respondent hired Scottie Ladner and Greg Payne, as well as David Brown and Ernest Robertson. Ladner and Payne applied together and after applying Brown asked if Respondent needed more help and he left and brought Robertson back. Respondent hired all four of those applicants—(i.e., Scottie Ladner, Greg Payne, David Brown, and Ernest Robertson).

Mark Cruff testified that he issued warnings to two or three other employees in addition to Scottie Ladner, because they were all standing around talking together. However, Respondent was unable to produce any of those alleged warnings other than the one issued to Scottie Ladner. Moreover, despite Cruff's testimony that Scottie Ladner consistently and regularly violated Respondent's policies, he failed to issue disciplinary action to Ladner except, according to his testimony, on two occasions.

Conclusions

1. The 8(a)(1) allegations

The General Counsel alleged that Respondent, through Tim Hamilton, told employees that employees had been laid off because of their union activities; promised employees consideration for promotion if they did not engage in union activities; interrogated employees about their union feelings; created an impression of surveillance of employees' union activities; conditioned employees employment on their not engaging in union activity; told employee they had been laid off because of their union activities; threatened employees with termination if they talked about the union; and told employees that other employees had been terminated because of their union activities.

The evidence was un rebutted that Tim Hamilton¹⁴ had several conversations with employees regarding union activities.

As shown above, the General Counsel alleged that Hamilton and Cruff interrogated employees about the Union and organizing activity. The applicable test for determining whether the questioning of an employee constitutes an unlawful interrogation is the totality-of-the-circumstances test adopted by the Board in *Rossmore House*, 269 NLRB 1176 (1984), *aff'd*, sub nom. *Hotel Employees Local 11 v. NLRB*, 760 F.2d 1006 (9th Cir. 1985), and it is appropriate to consider what has come to be known as "the *Bourne* factors."¹⁵ Those factors include (1) the background; (2) the nature of the information sought; (3) the identity of the questioner; (4) the place and method of interrogation; and (5) the truthfulness of the reply.

As to background, the Respondent demonstrated hostility against organizing on the job as shown herein. Regarding the nature of the information sought, Respondent showed through several actions shown above, the it was interested in ferreting out union organizing activity on its job and that it was willing to engage in unfair labor practices to stop that activity. The questioner was Respondent's highest official on the Long Beach job. The interrogations occurred on the job. As to the truthfulness of the reply, the record shows that some of the questioned employees replied truthfully and some did not. In consideration of the *Bourne* standard, I find that Hamilton in-

terrogated employees in violation of Section 8(a)(1) of the Act. The specific allegations involved the following incidents:

In April Hamilton questioned William Ballard if Ballard was organized or in the Union. On May 4 Hamilton asked David Ladner if he was affiliated with Union Local 903. When Ladner admitted he was affiliated with Local 903, Hamilton told him that he had to promise he would not try to bring the union up on the job. Hamilton told David Ladner that Joe Breland had got Dale Weekly to join the union and that Ballard had bugged two other guys that they needed to join the Union and that Hamilton would lose his job if they Union signed up 51 percent of the employees. Hamilton told David Ladner that Scottie Ladner and Bill Ballard had got caught up with Breland and Weekly. Also on May 4¹⁶ Hamilton told David Prichard on the phone that he had Mark Cruff phone Prichard because Joe Breland and a few other union employees were in the office being laid off and he did not want them to think he was hiring Prichard. Hamilton told Prichard that he wanted Breland off the job because Breland had taken some employees to the union hall and was trying to organize the job. Tim Hamilton told Prichard that he was being considered for promotion but had to promise not to engage in union organizing. On May 7 Hamilton told Scottie Ladner that he had to get rid of certain people including Joe Breland and Dale Weekly because they were trying to organize the job and that Scottie should not be talking to anybody about the Union or try to organize the job. Later Hamilton told Scottie Ladner that he would fire him again if he spoke any union shit to anyone.

As shown above, Hamilton questioned several employees about the Union and organizing activity. There was no showing that Respondent was aware that any of those employees were open union supporters at the time of the interrogation and the full record shows that their interrogation was not justified for any purpose other than to avoid union organization. On May 4 Hamilton told David Prichard that he was aware of the union activities of Joe Breland, Dale Weekly, and two other employees and thereby created the impression that he was engaged in surveillance of employees' union activities. Tim Hamilton told David Ladner that he had to promise not to try to bring in the union. By those comments Hamilton implied that Ladner's job was conditioned on his promise to not bring in the Union.

Additionally, as shown above, the General Counsel alleged that Mark Cruff interrogated employee David Prichard. Prichard was not shown to be an open union advocate. On May 15, Mark Cruff came to David Prichard on the job and asked if he used to be a member of the Union. Prichard said yes and that he was still a member of the Union. On June 16 Prichard talked to Tim Hamilton and Mark Cruff about needing more employees on the job. Prichard said there were a lot of union employees that could help but Hamilton and Cruff said they could not hire union employees. They asked Prichard if he knew any nonunion employees that could come on the job. Cruff did not dispute the above testimony. On June 25 Mark Cruff asked Prichard if

¹⁴ Tim Hamilton did not testify.

¹⁵ *Bourne v. NLRB*, 332 F.2d 47, 48 (2d Cir. 1964).

¹⁶ Tim Hamilton talked with David Prichard on May 24. Again, he told Prichard that he had gotten rid of Breland because Breland was trying to organize the job.

he had taped any conversations with Cruff or Hamilton. Cruff then asked Prichard if all union employees had tape recorders.

As shown above, I found that Tim Hamilton had threatened David Prichard on May 4 that he had laid off Joe Breland and other employees because of Breland was trying to organize the job. I find that the comments by Hamilton and Cruff, that Respondent could not hire union employees constitutes a threat to refuse to hire because of union association in violation of Section 8(a)(1) of the Act.

In June 2001, James Kidd Jr. applied for work and Tim Hamilton questioned him about his desire to organize the job. Hamilton told Kidd that Joe Breland was trying to organize and that Breland was putting that ahead of his work. Counsel for General Counsel admitted in his brief that Kidd was known to be affiliated with the Union but he argued that Hamilton's interrogation constituted a violation in view of the other unlawful conduct. In view of Kidd's open showing that he was associated with the Union, I find that June interrogation does not constitute an unfair labor practice.

On May 21 after Scottie Ladner was discharged for the second time, David Prichard overheard either Tim Hamilton or Mark Cruff, say that's the last union man on the job. Cruff testified and denied that he made that comment. In view of the full record, I find that Tim Hamilton made that comment. That comment constitutes a threat in the presence of one or more employees that Scottie Ladner had been fired because he was a union man and constitutes a violation of Section 8(a)(1).

David Prichard testified that Mark Cruff came to him on May 15 and asked if he used to be a member of the local union. On June 25 Cruff asked Prichard if he had tape-recorded any conversations with Hamilton or Cruff. Cruff asked Prichard if all union employees had tape recorders. Cruff did not deny making those comments to Prichard. Prichard was not shown to be a known union supporter on May 15. In view of the full record showing several instances of violations of Section 8(a)(1) and (3) before May 15 and June 25, I find those interrogations constituted violations of Section 8(a)(1).

On June 19, David Prichard talked with Tim Hamilton and Mark Cruff about hiring additional employees. Prichard suggested hiring union employees. Hamilton and Cruff replied that David and Scottie Ladner were blackballed from the Company and they could not hire any more union employees. Those comments constitute additional violations of Section 8(a)(1) as threats to refuse to hire employees because of their union activities.

The General Counsel alleged that Respondent imposed an unlawfully broad no-solicitation rule by telling David Ladner on May 4 that he had to promise not to bring the union into the job and telling Scottie Ladner on May 7, that he would be fired if he spoke union shit to anyone. I agree that Respondent imposed an unlawful no-solicitation rule by telling Scottie Ladner that he could not talk about the Union to anyone.

2. The 8(a)(3) allegations

(a) Terminations

(1) May 4

It is well established that the General Counsel has the burden of proving that Respondent was motivated to discharge alleged discriminatees because of union animus. *Manno Electric*, 321 NLRB 1 fn. 12 (1996); *Wright Line*, 251 NLRB 1083 (1980), enf'd. 662 F.2d 899(1st Cir. 1981), cert. denied 455 U.S. 989 (1982); *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983).

As to the layoffs of Joe Breland, Scottie Ladner, William Ballard, and Dale Weekly, the evidence is overwhelming. Before May 4 Respondent had shown its animus against the Union by, among other things, engaging in the 8(a)(1) violations shown above. On and after May 4, Respondent, through comments by job Project Manager Tim Hamilton, held out that it had laid off Breland, Ladner, Ballard, and Weekly on May 4 because of union organizing activity. For example, Hamilton told David Ladner on May 4 that he had to lay off some people because Joe Breland had been talking union business on the job and had a couple of guys go down to the union hall. On May 4, Hamilton phoned David Prichard and told him he had Mark Cruff phone and tell Prichard that his upcoming orientation was off because he had to lay off some people and that Joe Breland had been organizing on the job and had already taken a few employees to the union hall. Tim Hamilton told Scottie Ladner on May 7 that Ladner got caught up in a situation where Hamilton had to get rid of certain people including Joe Breland and Dale Weekly that were trying to organize the job. I find that Respondent laid off the seven employees on May 4 because of its animus against union organizing. As shown above, I discredited the testimony which would tend to show Respondent would have laid off the seven employees on May 4 in the absence of organizing activities. I find that Respondent engaged in unfair labor practices by laying off the seven employees.

(2) May 21

The General Counsel must prove that Respondent discharged Scottie Ladner on May 21 because of its animus against the Union. In that regard, the most telling evidence was Tim Hamilton's May 21 comment in the presence of David Prichard after having fired Scottie Ladner, "that's the last union man on the job."

The record includes more evidence supporting the allegation regarding Scottie Ladner's second discharge. It is important to recall that Scottie Ladner was one of the employees that were illegally laid off on May 4. At that time, as shown above, Tim Hamilton openly commented to employees that he had laid off those employees because of union organizing activity. Scottie Ladner was called back to work on May 7 but Tim Hamilton told him he could not talk about the Union.

In view of the above and the full record, I find that Respondent was motivated by its union animus to discharge Scottie Ladner on May 21. Respondent alleged that Scottie Ladner was discharged for poor work performance. However, I discredited the testimony of Mark Cruff that he issued a disciplinary warning to Scottie Ladner on May 10. I credit Ladner's testimony

that he was never shown the warning or informed that he was being disciplined. Mark Cruff testified to the effect that Scottie Ladner was a continuously problem employee. However, as shown herein, the credited testimony proved that Respondent did not discipline Ladner on those regular occasions of alleged misconduct. That showing as well as my determination that Mark Cruff was not a credible witness and my crediting the testimony of Scottie Ladner illustrates that Scottie Ladner would not have been discharged on May 21 in the absence of his union activities.

(b) *Refusal to hire*

In alleged refusal to hire cases the General Counsel must show:

- (1) That the respondent was hiring, or had concrete plans to hire, at the time of the alleged unlawful conduct; (2) that the applicants had experience or training relevant to the announced or generally known requirements of the positions for hire, or in the alternative, that the employer has not adhered uniformly to such requirements, or that the requirements were themselves pretextual or were applied as a pretext for discrimination; and (3) that antiunion animus contributed to the decision not to hire the applicants.

FES, 331 NLRB 9, 12 (2000). See also *Americlean Restoration & Maintenance Corp.*, 335 NLRB No. 83 (2001).

(1) Failure to consider for hire on May 15

James Kidd Jr., Cliff Zylks, Hewitt Barton, Gerald Lott, Clay Leon, Richard Berlier, Chuck Dame, and Dwane Reeves all applied for work at Long Beach on May 15 while wearing shirts, caps, and badges that identified each of them as a union advocate. Hamilton and Kidd had an oftentimes rambling conversation about the job and union organizing on June 6. Kidd tape-recorded that conversation. Among other things, Hamilton said that if hired, Kidd would not place his work ahead of union organizing. After Kidd stated that he would do the work even though he wanted to talk to the employees about the Union, Hamilton refused to hire any of Kidd's people at rates of pay below that normally paid journeymen electricians. When Kidd stated that he wanted to perform the required work, Hamilton continued to state that Kidd actually wanted on the job to organize for the Union. Hamilton told Kidd that he would talk to his bosses about hiring the men brought in by Kidd as helpers. None of the men that applied with Kidd were ever offered employment by Respondent.

Kidd's resume submitted to Respondent with his application showed that he worked for IBEW Local 903 from 1982 to 1986, that he was a member of that Local from 1983 until the present, that he served the Local as recording secretary, treasurer, and NJATC apprenticeship instructor, that he was involved in "salting," and was a union organizer from 2000 to present. Kidd's application and resume illustrated that he was a qualified electrician. Clay Leon's application and resume submitted to Respondent showed that he was an organizer for the Union and was a journeyman electrician. Richard Berlier's application and resume submitted to Respondent showed that he was an organizer for the Union and had experience as a journeyman electrician. Clifford Zylks' application and resume

submitted to Respondent showed that he was an organizer for the Union and was a journeyman electrician. Charles Dame Jr. submitted an application and resume to Respondent that showed he was an organizer for the Union and was a journeyman electrician. Dwane Reeves' application submitted to Respondent showed that he had completed the IBEW/NECA application program. Gerald Lott's application submitted to Respondent showed that he had completed an IBEW apprenticeship. Hewitt Barton's application submitted to Respondent showed that he had completed an IBEW apprenticeship school.

During the 6 months¹⁷ following May 15, Respondent hired 31 journeymen electricians and 28 electrical helpers (GC Exh. 48).

(2) Failure to consider for hire on July 6

Alvin Cuevas, Kerman Ladner and Troy Bordelon came to Respondent's Long Beach job on July 6 and asked for work. All three were wearing union caps and shirts. Cuevas, who had previously submitted an application on May 2, asked Tim Hamilton if his application was still good. Hamilton replied that the application was still good. Cuevas had listed Joe Breland as a personal reference on that May 2 application. He wore a union belt buckle when applying on May 2. Ladner and Bordelon completed applications on July 6 and left those applications with Respondent. Cuevas, Ladner, and Bordelon have not been contacted or otherwise offered employment by Respondent.

David Brown and Earnest Robertson were hired on July 9, after applying at Respondent's Long Beach job wearing nothing to show that either favored the Union.

Respondent hired 32 journeymen electricians between July 6, 2001, and January 6, 2002 (GC Exh. 48).

Respondent's refusal to hire Kidd, Zylks, Barton, Lott, Leon, Berlier, Dame, Reeves, Cuevas, Kerman Ladner, and Bordelon:

The record shows and I find that all the above-mentioned applicants submitted job applications to Respondent on either May 15, July 6, or earlier. Respondent was aware of those applications and Respondent had reason to know that all those applicants were interested in union organizing. Respondent also knew through the applications and through conversations involving both James Kidd and Alvin Cuevas, with Tim Hamilton that the applicants were all qualified electricians. I find that evidence proved that the applicants had "experience or training relevant to the announced or generally known requirements of the positions for hire,"¹⁸ and "antiunion animus contributed to the decision not to hire the applicants." *FES*, 331 NLRB 9 (2000).

Respondent did not dispute but that Tim Hamilton expresses concern to James Kidd that Kidd wanted to organize the job. However, Respondent argued that it is not evidence of improper motivation for an employer to express concern that applicants are concerned with union organizing and not with working. Here, however, there was no showing that any of the

¹⁷ As shown herein, Tim Hamilton said that applications were valid for 6 months after submission.

¹⁸ The full record showed that Respondent consistently hired applicants after considering only their applications to determine experience.

alleged discriminatees did anything to cause Hamilton to believe they would place anything ahead of their work while on the job. As shown in the recorded conversations between Hamilton and Kidd, Hamilton expressed concern because the applicants identified themselves as union organizers. None of the applicants showed intent to do anything less than perform their work if hired. Only Hamilton expressed a belief that affiliation with union organization illustrated some lack of attention to work. In fact, James Kidd assured Hamilton that the contrary was true. Kidd told Hamilton that he and the other applicants fully intended to perform their work. I am convinced that Hamilton did illustrate that Respondent was motivated by antiunion animus in refusing to hire any of the alleged discriminatees.

Moreover, the record shows that Respondent was hiring journeymen and helper electricians at the times of and after the applicants applied for work. The record shows that Respondent hired 31 journeymen electricians and 27 helper electricians between May 15 and November 15, 2001. I credit the testimony that Tim Hamilton told employees that applications were good for six months. That testimony was never disputed. Therefore the applications remained valid until November 15 in the cases of Kidd, Zylks, Barton, Lott, Leon, Berlier, Dame, and Reeves, and beyond November 15 in the case of Cuevas, Kerman Ladner, and Bordelon.

I find that Respondent was hiring at material times on and after the above-mentioned applicants applied for work; that each applicant showed on his application or attached resume that he qualified for the positions that Respondent filled during relevant periods; and that antiunion animus contributed to Respondent's refusal to hire any of the alleged discriminatees. Respondent failed to prove it would have refused to hire any of the alleged discriminatees in the absence of their union affiliation.

(3) Economic strike and refusal to reinstate

As shown above, on August 7 David Prichard, David Brown, Ernest Robertson, and Thomas Corbin told Tim Hamilton they were going out on an economic strike. Those actions followed immediately after Prichard told Hamilton that he and others had been promised pay raises for 4 or 5 weeks and again, it was promised next week. James Kidd Jr. wrote four letters to Respondent on that same day stating that Thomas Corbin, David Brown, David Prichard, and Ernest Robertson were on economic strike until further notice. Corbin, Brown, Prichard and Robertson returned to the job on August 24 and told Mark Cruff they would return to work without condition. Later that day David Brown phoned Respondent and spoke with James Taylor. Brown told Taylor that he was speaking for Corbin, Robertson, Prichard, and himself and that they were making unconditional offers to return to work. Taylor replied their positions had been filled. Respondent has never offered to reinstate Brown, Prichard, Robertson, or Corbin.

Respondent has a legal obligation to reinstate economic strikers to jobs created by loss of replacement employees following an unconditional offer to return to work. *Rose Printing Co.*, 304 NLRB 1076 (1991). Respondent pointed to *Laidlaw Corp.*, 171 NLRB 1366 (1968), and argued that General Counsel must prove (1) that each alleged striker was an employee at

the time of the strike; (2) each employee made a proper offer to return to work; and (3) the same or substantially equivalent job formerly occupied by the striker was available or became available after the offer to return.

Here the evidence showed that Respondent employed all four economic strikers as electricians¹⁹ and Respondent employed each at the time of the August 7 strike. I find that each of the alleged striking employees did make unconditional offers to return to work. All four appeared on the job and told either Mark Cruff or Sid Bowers, they were offering to return to work without condition and subsequently, David Brown phoned Respondent and made an unconditional offer to return on behalf of all four alleged strikers to Project Manager James Taylor.

Although the record does not show with any precision that each of the alleged strikers were replaced before their unconditional offer, the record shows that Respondent hired four journeymen electricians between on August 7 and August 20. James Barrett, William Gray, and Thomas Mitchell were hired on August 7 and Leon Quigley was hired on August 20.

After the alleged strikers made unconditional offers to return to work on August 20, 2001, Respondent hired journeymen electricians Allen Andrews on September 4, Charles Brown Jr. on October 24, Joe Cook on October 25, Kenneth Flott on September 7, Aundraye Howze and Ralph Howze²⁰ on September 10, Jeremy Johnson on October 10, Johnathan Jones on November 13, Keith Lambert on August 27, Daniel Lawson on October 24, Brian McNease on October 10, William Moser on August 29, Jon Nobles on October 22, James Rawls on September 20, David Simmons on September 20, Mark Stinson on November 15, Robert Tucker on October 25, and Robert Ward on September 17.

I find that Respondent unlawfully failed and refused to reinstate Prichard, Brown, Robertson, and Corbin after their August 24 unconditional offer to return to work in violation of Section 8(a)(1) and (3).

CONCLUSIONS OF LAW

1. T.C. Broome Construction Company, Inc. is an employer engaged in commerce as defined in the Act.

2. International Brotherhood of Electrical Workers, Local Union No. 903, AFL-CIO is a labor organization as defined in the Act.

3. By coercively interrogating its employees about the Union; by demanding that its employees promise not to talk about the Union or try to organize its job; by telling its employees that other employees had been laid off because of their union activities; by telling its employee that it had phoned him in an effort to mislead prounion employees into believing they were not being laid off because of the Union; by telling its employee he may be considered for promotion if he promised not to en-

¹⁹ Respondent argued that the General Counsel failed to prove that the alleged strikers occupied particular jobs on August 7. However, that is incorrect. Respondent's records included "separation notice" for David Prichard, David Brown, Ernest Robertson, and Thomas Corbin showing each was a journeyman electrician in the "E & I" department, and was discharged on August 6 because of an economic strike.

²⁰ Ralph Howze had not worked as a journeyman electrician before September 10.

gage in union organizing activity; by telling its employees that it had to get rid of some employees because they were trying to organize the job; by threatening to fire its employee if he talked about the Union on the job; by creating the impression among its employees that it was engaged in surveillance of the employees' union activities; and by stating in the presence of its employee that it had just fired the employee that was the last union man on the job, Respondent engaged in conduct in violation of Section 8(a)(1) of the Act.

4. Respondent, by laying off its employees Joe Breland, Scottie Ladner, Bill Ballard, Dale Weekly, Ralph Morin, Sam Patterson, and Jesse Lewis on May 4, 2001, and by failing and refusing to recall Joe Breland, Bill Ballard, and Dale Weekly on May 7; by failing and refusing to hire employees James Kidd Jr., Cliff Zylks, Hewitt Barton, Gerald Lott, Clay Leon, Richard Berlier, Chuck Dame, and Dwane Reeves on and after May 15 and employees Alvin Cuevas, Kerman Ladner, and Troy Bordelon on and after July 6; by discharging its employee Scottie Ladner on May 15 and by refusing to recall its employees David Prichard, David Brown, Ernest Robertson, and Thomas Corbin following their economic strike and unconditional offer to return to work, on and after August 20; has engaged in conduct in violation of Section 8(a)(1) and (3) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in unfair labor practices, I shall recommend that it be ordered to cease and desist²¹ therefrom and to take certain affirmative action designed to effectuate the policies of the Act.²²

The Respondent, having discriminatorily laid off employees Joe Breland, Scottie Ladner, Bill Ballard, Dale Weekly, Ralph Morin, Sam Patterson, and Jesse Lewis and discriminatorily discharging employee Scottie Ladner, must offer them reinstatement and make them whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Respondent having discriminatorily refused to hire James Kidd Jr., Cliff Zylks, Hewitt Barton, Gerald Lott, Clay Leon, Richard Berlier, Chuck Dame, Dwane Reeves, Alvin Cuevas, Kerman Ladner, and Troy Bordelon and discriminatorily refusing to reinstate Thomas Corbin, David Brown, David Prichard, and Ernest Robertson following their economic strike and unconditional offer to

return to work, it must offer each of them immediate employment and make each whole for all loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings, conclusions of law, and on the entire record, I issue the following recommended²³

ORDER

The Respondent, T.C. Broome Construction Company, Inc., Long Beach and Pascagoula, Mississippi, its officers, agents, successors, and assigns, shall

1. Cease and desist from:

(a) Failing and refusing to supply the Union with relevant information concerning terms and conditions of employment of bargaining unit employees in accord with established procedures and following requests by the Union; and by failing and refusing to supply the Union with relevant information concerning terms and conditions of employment of bargaining unit employees pursuant to requests by the Union for the results of its route reviews of stations.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Within 14 days from the date of this Order, offer reinstatement to Joe Breland, Scottie Ladner, William Ballard, and Dale Weekly to their former jobs or, if such job no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges to which they would have been entitled if they had been hired.

(b) Within 14 days from the date of this Order, offer employment to James Kidd Jr., Cliff Zylks, Hewitt Barton, Gerald Lott, Clay Leon, Richard Berlier, Chuck Dame, Dwane Reeves, Alvin Cuevas, Kerman Ladner, and Troy Bordelon to jobs for which they applied or, if such job no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges to which they would have been entitled if they had been hired.

(c) Make Joe Breland, Scottie Ladner, William Ballard, Dale Weekly, James Kidd, Jr., Cliff Zylks, Hewitt Barton, Gerald Lott, Clay Leon, Richard Berlier, Chuck Dame, Dwane Reeves, Alvin Cuevas, Kerman Ladner, Troy Bordelon, David Prichard, David Brown, Ernest Robertson, and Thomas Corbin whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, less any interim earnings, plus interest.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause

²¹ A question may arise as to whether the remedy should extend to require Respondent to permit union solicitation at the bulk mail center by anyone designated by the Union. I find that the record proved that it was Respondent's practice to permit union representatives access to the facility for union business. Therefore, the cease and desist order should include anyone designated by the Union as its representative without regard to whether that person is an employee of the Respondent.

²² I am not persuaded that extraordinary remedies including an award of attorney's fees and costs are justified. Therefore, I reject the Charging Party's request.

²³ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of payment due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facilities in Long Beach and Pascagoula, Mississippi, copies of the attached notice.²⁴ Copies of the notice, on forms provided by the Regional Director for Region 15, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Within 21 days after service by the Region, file with the Regional Director, Region 15, a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated: Washington, D.C. August 14, 2002

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist any union

Choose representatives to bargain with us on your behalf

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities

WE WILL NOT coercively interrogate our employees about their union activity.

WE WILL NOT tell our employees that our project manager will lose his job if he permits employees to engage in union organizing activity on the job.

WE WILL NOT threaten our employees that employees had been laid off because they were mixed up in union organizing activity.

WE WILL NOT tell our employees their orientation program had been canceled because employees were engaged in union organizing activity.

WE WILL NOT threaten our employees that we want employees off the job because they are engaged in union organizing activity.

WE WILL NOT tell our employees they are being considered for promotion but will have to promise not to engage in union organizing activity.

WE WILL NOT tell our employees they should not be talking to anybody about the Union or trying to organize the job.

WE WILL NOT threaten our employees with discharge if they talk about the Union to anyone.

WE WILL NOT create the impression that we are engaged in surveillance of our employees union organizing activity.

WE WILL NOT tell our employees that we cannot hire employees affiliated with the Union.

WE WILL NOT ask our employees to recommend nonunion people for work.

WE WILL NOT threaten our employees that we have laid off employees because of union organizing activity.

WE WILL NOT impose an unlawful no-solicitation rule on our employees by telling them they may not discuss the Union.

WE WILL NOT refuse to employ applicants because they show themselves to be union organizers.

WE WILL NOT lay off employees because they engage in union organizing.

WE WILL NOT discharge and refuse to reinstate employees after they engage in an economic strike and make unconditional offers to return to work.

WE WILL NOT discharge our employees because of their union activity.

WE WILL NOT refuse to hire applicants for employment because of their support of International Brotherhood of Electrical Workers, Local Union No. 903, AFL-CIO or any other labor organization or their engagement in union activities or because of their status as organizers for the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL immediately reinstate to their former jobs or, if those jobs no longer exist, to substantially equivalent jobs, Joe Breland, William Ballard, and Dale Weekly because of our action in unlawfully laying them off on May 4 and refusing to immediately reinstate each of them and WE WILL make whole Breland, Ballard, Weekly, and Scottie Ladner because of our illegal May 4 layoff.

WE WILL immediately reinstate Scottie Ladner to his former job or, if that job no longer exists, to a substantially equivalent job, and make Scottie Ladner whole for all wages and other benefits lost because of his illegal discharge.

WE WILL offer immediate work to James Kidd Jr., Cliff Zylks, Hewitt Barton, Gerald Lott, Clay Leon, Richard Berlier, Chuck Dame, and Dwane Reeves because we illegally refused to employ any of them after they applied for work on May 15, and to Alvin Cuevas, Kerman Ladner, and Troy Bordelon because we refused to employ any of them after they applied on July 6, because all appeared to be organizers for the Union and

²⁴ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

we will make James Kidd Jr., Cliff Zylks, Hewitt Barton, Gerald Lott, Clay Leon, Richard Berlier, Chuck Dame, Dwane Reeves, Alvin Cuevas, Kerman Ladner, and Troy Bordelon whole for all wages and other benefits lost because of our illegal actions.

WE WILL immediately reinstate David Prichard, David Brown, Ernest Robertson, and Thomas Corbin to their former jobs or, if those jobs no longer exist, to substantially equivalent

jobs, because of our action in unlawfully refusing to reinstate them following their economic strike and their unconditional August 20, 2001 offers to return to and WE WILL make Prichard, Brown, Robertson, and Corbin whole for all lost wages and other benefits suffered because of our unlawful action.

T.C. BROOME CONSTRUCTION COMPANY, INC.